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JUL 13 1992

I, Martha Diaz, do hereby certify that a true copy of the foregoing Reply Comments of Digital Systems International, Inc., was served this 7th day of July 1992, by United States Mail, first class, postage prepaid, upon the parties listed on the attached service list.

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FEDERAL COMMUNICATIONS COMMISSION
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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C.

In the Matter of)
)
The Telephone Consumer)
Protection Act of 1991)
_____)

CC Docket No. 92-90

SECOND COMMENT OF
DIGITAL SYSTEMS INTERNATIONAL, INC.,
TO
FCC NOTICE OF PROPOSED RULEMAKING
(Adopted April 10, 1992; Released April 17, 1992)

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BEFORE THE
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TO
FCC NOTICE OF PROPOSED RULEMAKING
(Adopted April 10, 1992; Released April 17, 1992)

Digital Systems International, Inc. ("Digital Systems"), again expresses its appreciation for the opportunity to comment on the work accomplished by the FCC in its Notice of Proposed Rulemaking (the "NPR") mandated by the Telephone Consumer Protection Act of 1991 (the "TCPA"). As stated in its first comment submitted May 26, 1992, Digital Systems supports the views voiced by Congress and the American people regarding the improper use of automated telephone dialing equipment. Digital Systems has reviewed the comments submitted by scores of business entities in the FCC's designated first comment round, and continues to believe, along with the majority of the entities who have commented on the proposed regulations, that reasonable controls can and should be placed on this technology so the American consumer is protected.

The purpose of this second comment, however, is to point out that a significant number of parties submitted comments remarkably similar to the comment of Digital Systems. Each of these parties is a user or vendor of predictive dialing systems, and each expressed concern that the proposed

regulations promulgated by the FCC are unnecessarily restrictive in connection with use of predictive dialer systems.

Common themes running through these comments include:

- The fact that, because predictive dialers are used to connect live operators with the called parties, predictive dialers are completely different from the kinds ADRMPs and ADADs that Congress intended to regulate with enactment of the TCPA.
- Many point out that telephone numbers are not randomly or sequentially generated by predictive dialers, and consequently predictive dialers are not or should not be subject to the TCPA at all. These parties ask the FCC to reflect this interpretation more clearly in its regulations.
- Similarly, many comment on the ambiguity of the regulations concerning the definition of auto dialers, and seek clarification of the kinds of systems and the types of use thereof that will trigger the restrictions imposed by §§227(b) and (d) of the TCPA. Several of these comments focus on the fact that predictive dialers are used to connect live operators to the called parties, are therefore more akin to live operator calls, and should be treated differently from auto dialers.
- Others focus specifically on issues addressed in Digital Systems' first comment – that predictive dialers only deliver "messages" when playing a brief request to "hold the line" for an operator.

Attached as Exhibit A is a matrix of the various comments submitted by others that amplify or echo the comments submitted by Digital Systems. A review of these comments proves the importance of this issue to mainstream and responsible American businesses. This issue should be given an equal amount of attention to that which will be accorded the national do-no-call list issues, which was the focus of so many of the comments submitted.

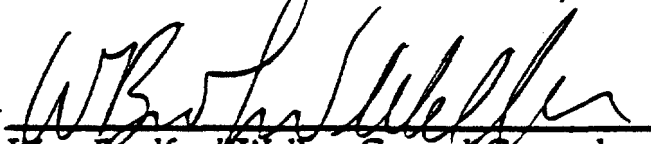
Digital Systems again urges the FCC to adopt a definition of the term "message" so that predictive dialer use of hold-queues is not restricted, or to

otherwise clarify or amend its regulations as suggested by others to alleviate the impact of the TCPA on responsible use of predictive dialers.¹

Respectfully Submitted this 24th day of June, 1992.

DIGITAL SYSTEMS INTERNATIONAL, INC.

By


Wm. Bradford Weller, General Counsel

¹ Digital Systems suggested in its first comment that the term "message" be defined to exclude requests to hold the line for a live operator, or some similar request, where:

- a. the calling party intends to connect the called party with a live operator as soon as an operator is available;
- b. the duration of time the called party is placed on hold does not exceed sixty seconds;
- c. no solicitation or other request is made by the calling party in the recorded request; and
- d. where the system automatically releases the called party's line within 5 seconds of the time notification is transmitted to the system that the called party has hung up.

EXHIBIT A

SUMMARY OF COMMENTS RE PREDICTIVE DIALERS

COMMENTING ENTITY	SUMMARY OF COMMENTS
SEARS	<p>Final rule should draw a clear distinction between the ordinary use of automatic dialing equipment and the automated delivery of a recorded message.</p> <p>Calls merely utilizing a labor saving device to make live operator calls should not be subject to any of the ADRMP related rules since they pose no threat to privacy rights.</p> <p>Disconnection requirement: notification must be the signaling protocol that is transmitted from the called party back to the originating equipment. Also, any standards set should be consistent with technical capabilities.</p>

<p>NATIONAL RETAIL FEDERATION</p>	<p>Comment focused on debt collection exemption.</p> <p>Automatic dialing equipment greatly increases the efficiency of the collector and thereby reduces the cost of collection, alleviating unnecessary burdens on the American economy and the American public.</p> <p>Requirement for self identification in "message:" In the case of calls made using sophisticated dialers, the delivery of a complete preamble may not always be possible. A prerecorded message may be interrupted, before completion, when the live operator comes on the line. The literal requirement of the FCC's proposed rule could be satisfied by excluding use of a please hold request as a triggering issue. Either result is illogical, costly and unnecessary with respect to TCPA.</p> <p>The NRF believes the ideal solution is simply exempt collection calls.</p>
<p>SPRINT</p>	<p>Sprint uses autodialers to initially dial the potential customer, and the customer may occasionally be asked by a pre-recorded request to wait momentarily for a live operator during occasional overflow situations.</p> <p>The autodialer is used as a productivity tool that lowers the cost of providing services. In neither case (collections and telemarketing applications) is an unsolicited pre-recorded advertisement delivered to the customer.</p> <p>The potentially objectionable intrusion to the privacy of the customer is minimized through the use of live personnel that actually deliver the real content of the call.</p> <p>In light of the use of live personnel to deliver real content of any communication with the called party, and the cost savings inherent in the use of predictive dialers, the rules should clearly allow auto dialers to use pre-recorded "wait momentarily" for live cust. svc. reps. announcements.</p>

JC PENNEY

It is critical to distinguish, between auto dialers generally and the sub class of dialers known as ADRMPs. Auto dialers are a device designed to dial specified numbers, to listen for a ring on the receiving end, and to hook together the calling party and the called party when the phone is answered.

In most cases, when the calling party is a live operator, an auto dialer call is indistinguishable to the recipient from an manual call. An ADRMP essentially substitutes a pre-recorded message for the live operator. When the calling party and the called party are connected, the called party hears the voice of a recording device and ordinarily has no opportunity to speak with a live op. In the case of sophisticated dialers, delivering a complete hold msg. may not always be possible.

When all operators are busy, a brief request to "please stand by for an important message might be delivered. Since the equipment is programmed to connect a called party to a live operator at the earliest opportunity means that the recorded msg. sometimes will be interrupted in order to deliver a live operator more quickly. Thus, even though the equipment might be programmed to deliver the self ID message required by the TCPA, there is no guarantee that a live operator will become available before message is complete.

Since this interruption occurs as a result of the equipment's programmed desire to facilitate the communications between the called party and the live operator, to require that consumers be held on the recording for an additional period of time in order to allow them to hear the recording state the name of the company is costly, illogical, and self-defeating with respect to the purposes of the act.

JC Penny recommends that in those cases where a live operator is delivered to the called party, the FCC should clarify that the phrase "beginning of the message" to state that it is satisfied when a live operator is offered for questioning as to the identity of the entity initiating the call.

VANGUARD CELLULAR	A predictive dialer is not an auto dialer because it does not and can not <u>generate</u> numbers. The numbers must be loaded into it.
NORTH AMERICAN TELECOMMUNICATIONS ASSOCIATIONS	<p>In addressing consumer issues posed by certain uses of technology, it is important to preserve the ability of businesses to use new technology flexibly and efficiently in marketing activities which the FCC recognizes are generally beneficial to consumers.</p> <p>In the TCPA's statements, the term "auto dialer call" is apparently being used as a shorthand for "transmission of a pre-recorded message." It is important to distinguish predictive dialing, which does not involve pre-recorded messages and does not lead to the specific problems targeted by the TCPA, from the abusive transmission of prerecorded advertisements to randomly dialed number's--the primary abuse at which the legislation's prohibitions are aimed.</p> <p>NATA urges the FCC to avoid using the term autodialer in such as way that predictive dialers are regulated.</p>

**AMERICAN COLLECTORS
ASSOCIATION**

Even with the most advanced predictive dialing systems, the situation arises in which a call is connected before an operator is available. If the system were to simply hang up because no operator is available, then the answering party is left with the annoyance or possible disturbing uncertainty of an unidentified call.

If the system leaves the party on the line with no message or indication of any kind for more than a few seconds, the answering party is likely to hang up.

To avoid delay-related problems, most predictive dialing systems used by collectors deliver a recorded message to the called party which asks the party to hold for a moment. As an adjunct to predictive dialing, the automated recorded message functions solely for the purpose of alerting the answering party that operator will be coming on the line. The message conveys no other information.

ACA believes that this kind of recorded message, which functions solely as a functional adjunct of predictive dialing, is distinct from prerecorded messages with informational or solicitation content. Sales solicitations or other uses in which delivery of the contents of the recorded message is itself the purpose of the call are not the equivalent of "please hold" or "all operators are busy" or "one moment please".

ACA believes the TCPA was clearly directed at the use of "artificial or pre-recorded voice systems" as distinct from the requirements applicable to automated predictive dialing.

<p>GTE SERVICE CORPORATION</p>	<p>The FCC needs to clearly characterize what types of equipment or systems are intended to be included within the scope of the TCPA and FCC's rules. The definitions are ambiguous. In any instance where the FCC will allow a live operator call, GTE urges the FCC to allow predictive dialers or similar automation to make such operations efficient. Use of a more efficient method of calling with live operators should not raise any TCPA privacy concerns.</p>
<p>AMERICAN EXPRESS COMPANY</p>	<p>Live telephone solicitations require less regulatory attention than artificial or pre-recorded voice solicitations. The use of automatic dialing devices not coupled with artificial or prerecorded voice solicitations need not be restricted.</p> <p>The language of the TCPA, its legislative history and the NPRM contain inconsistent terms regarding "automatic dialing devices" and "artificial or prerecorded voice machine."</p> <p>It seems clear from the text of the TCPA that Congress recognized that automatic dialing devices (i.e.; those which are not coupled with artificial or prerecorded voice machines) pose virtually no threat to residential privacy interests. It is important that a distinction be made, as Congress intended, between autodialers and artificial or prerecorded voice machines. The former merely accomplish a function--dialing--which all callers must do, and therefore pose no added threat to privacy.</p>
<p>CUC INTERNATIONAL</p>	<p>Whether a live operator call is placed by use of an autodialer or an operator's fingers should be irrelevant to the FCC's analysis. The only relevant factor from the customer's perspective is whether a live operator or a prerecorded message is on the other end of the line.</p>

TIME WARNER, INC.	Time Warner submits that the FCC should take precaution not to view as interchangeable terms "automatic dialing systems," "autodialer," "artificial or prerecorded voice" and "automated call."
BANK ONE CORP ET AL.,	<p>Calls that use an auto dialing device, but do not leave a prerecorded or artificial voice solicitation message, use a mechanism that is often referred to as a "predictive dialer".</p> <p>In certain circumstances, a predictive dialer may leave a brief, non-solicitation message for the called party, either requesting that the party hold for a live operator, or if the called party is not home, requesting that the party call a specified number.</p> <p>The FCC should state that such calls that leave a brief message fall within the exemption for commercial, non-solicitation calls. The FCC's draft regulations recognize the difference between autodialer calls leaving a prerecorded or artificial voice message and calls that switch to a human operator once the connection is made.</p> <p>In the NPRM however, the FCC treats these categories as interchangeable and certain language in the NPRM could mistakenly be interpreted to suggest that the use of a predictive dialer to make calls to residential subscribers, where the dialer switches to a human operator, is prohibited unless it falls within one of the exemptions defined in the regulations.</p> <p>This was clearly not the intent of the TCPA, and the FCC should clarify that its regulations concerning automatically dialed calls to residential subscribers apply only to auto dialing systems that leave a prerecorded or artificial message (more than a please hold request).</p>
BALTIMORE GAS & ELECTRIC	Predictive dialers should not regulated because telephone numbers are not generated, either randomly or sequentially.

CITICORP	<p>Exclude live operator calls (using predictive dialers) from the prerecorded messaging delivery impacts of the TCPA.</p> <p>Predictive dialers should be treated differently from the types of machines Act intended to regulate. No number generation.</p>
AMERICAN SERVICE TELEMARKETING	Treat predictive dialers differently. Live operator calls should not be regulated as message devices.
MERRILL LYNCH PIERCE	Live operator calls should be permitted. Brokers make 1.5 billion calls per year, without significant complaints. Favors company specific do not call lists.
CENTEL CORP	<p>TCPA does not prohibit calls by predictive dialers: No random or sequential number generation.</p> <p>Requests clarification and confirmation from the FCC.</p>
AMERITECH OPERATING CO. (ILLINOIS BELL; INDIANA BELL; MICHIGAN BELL; OHIO BELL; AND WISCONSIN BELL)	<p>Statute and regulations are ambiguous regarding restrictions on use of auto dialers and messaging systems.</p> <p>FCC should distinguish between live operator calls (using predictive dialing systems) and the types of calls TCPA intended to regulate. 2% of calls put into their hold queues at even slowest calling setting. Need to use the please hold requests.</p> <p>Live operator calls less offensive to consumers.</p>
SOUTHWESTERN BELL	Predictive dialer calls, using hold-queue "please hold" requests, should be excepted from regulation of autodialer calls.

STUDENT LOAN MARKETING ASSOCIATION	<p>Raise issues re use of predictive dialer hold queue "please hold" requests:</p> <ul style="list-style-type: none"> • calls transferred to operator before any ID message completed. • Rarely receive complaints.
CONSUMER BANKERS ASSOCIATION	FCC should create an exception for predictive dialer use. The please hold request is not a message; regulations should be clarified to make sure predictive dialing is not subject to rules and standards.
AMERICAN BANKERS ASSOCIATION	<p>Requests clarification that predictive dialers not regulated since they just store and do not generate numbers to be called.</p> <p>Requests clarification over use of self ID rules and Fair Debt Collection Practice restrictions.</p>
PACIFIC BELL & NEVADA BELL	Distinguish between predictive dialers and regulated auto dialers. No numbers generated.
ELECTRONIC INFORMATION SYSTEMS	<p>ADRMPS do not facilitate communication between caller and callee.</p> <p>There is no perceptual difference between predictive dialing and manual dialing. The fact that the process is automated is irrelevant from the standpoint of the telephone consumer. It is clear that there are several distinguishing factors between autodialers and predictive dialers.</p> <p>The laws regulating autodialers should reflect the different automated dialing systems, and the FCC needs to clarify the definition and use consistent industry terminology.</p>

EXHIBIT B

INDUSTRY STATISTICS

COMMENTING ENTITY	SUMMARY OF COMMENTS
Business Marketing, June 1992	The 100 top business to business marketers anticipate to increase spending in telemarketing by 49% during the next few years.
CITICORP	<p>\$5 Million per year spent on predictive dialing equipment credit card operations.</p> <p>\$5:\$1 return (they recover \$5 for every \$1 spent).</p> <p>\$26 Million per year in revenue resulting from use of predictive dialing equipment.</p>
AT&T	<p>Telemarketing industry supports 3.4 million jobs nationwide.</p> <p>Over 300,000 bus. actively telemarket to business & residential consumers.</p> <p>Businesses make more than 300,000 tmktg. calls to more than 18 million Americans each day.</p> <p>One out of every 14 people called by a telemarketer makes a purchase.</p>
JC PENNEY	Penneys has invested more than \$13 million in auto dialer equipment for debt collection.

AMERICAN COLLECTORS ASSOC.	U.S. collection agencies handled betw. \$70 and \$80 billion in placements in 1991.
CUC INTERNATIONAL	More than 2 million of the potential customers called purchase one or more of CUC's services, generating approx. \$250 million revenues a year. Once potential customers become members, they purchase trips & merchandise worth over \$400 million per year.
AMERICAN SERVICE TELEMARKETING	300 Employees engaged in calling activities. Invested more than \$800,000 in predictive dialing equipment.
AMERICAN COUNCIL OF LIFE INSURANCE COMPANIES	Statistics of complaints generated by live operator calls by various members: <ul style="list-style-type: none"> • 26 complaints in 3.4 million calls in 1991. • .53 complaints per 100,000 calls in 1991. • 125 complaints out of 22.1 million calls in 1991. • .0004% complaints in 1991
TIME WARNER, INC.	More than 3.7 million people order Time Warner products annually via tmktg.